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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|----------------------|---------------------|------------------|
| 10/009,504 | 03/28/2002 | Garry Royston Fish | 10541-824 | 5011 |

29074 7590 04/22/2004
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EXAMINER

FLANIGAN, ALLEN J

ART UNIT PAPER NUMBER

3753

DATE MAILED: 04/22/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

| | | |
|------------------------------|--------------------------------------|--|
| Office Action Summary | Application No. 10/009,504 | Applicant(s) FISH, GARRY ROYSTON |
| | Examiner Allen J. Flanigan | Art Unit 3753 |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 3/16/2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-13 and 15-24 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-13 and 15-24 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

Claims 1-13 and 15-24 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

As indicated in the Advisory action, reference in the claims to “resum[ption of] laminar flow before encountering subsequent projections” is indefinite and meaningless, because the claim places no limitations on the fluid density or velocity. One can readily envision fluids so dense and slow moving, like the proverbial molasses, that the flow would never cease being laminar; conversely, the fluid could be extremely low density and high velocity, such that an inordinate spacing between projections would be needed to permit laminar flow to reestablish. See *Ex parte Brummer*, 12 USPQ2d 1653 (Bd. Pat. App. & Inter. 1989).

Claims 1-5, 9, 12, 12, 15-17, 21, and 24 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Kiser et al.

Please see the comments made in regard to the above rejection in previous Office actions. The language added to claim 1, even if argued to be sufficiently definite to meet the requirements of 112 second paragraph, is of such breadth that it obviously fails to add any structural limitation defining over Kiser et al. In other words, since the structure of the tube disclosed in Kiser et al. falls within the structural limitations recited previously in the claims, it presumably meets whatever limitations are imparted by the language

added to claim 1. Within the virtually infinite range of possible densities and velocities for fluid flowing within the tube, there exists at least one set of values that, in either the tube of the claimed invention or the tube shown in Kiser et al., will permit resumption of laminar flow between adjacent projections in the upstream/downstream direction.

Claims 6-8, 10, 11, 18-20, 22, and 23 are rejected under 35 U.S.C. 103(a) as being unpatentable over the combined teachings of Kiser et al. and Rhodes.

Please see the comments made in regard to the above rejection in the previous Office action.


Applicant's arguments filed 2/16/2004 have been fully considered but they are not persuasive.

See the discussion above. Applicant is reminded that for anticipation, it is not necessary that the prior art teach what the applicant teaches. It is only necessary that the claims "read on" something in the prior art. Kiser et al. may have not been concerned at all with laminar flow, but if the spacing and size of projections taught in Kiser et al. is equivalent to embodiments disclosed by the applicant, it is immaterial whether Kiser et al. recognized that their pattern of protrusions and spacings would inherently provide a particular degree of laminar flow for certain fluids and certain flow speeds.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Allen J. Flanigan whose telephone number is (703) 308-1015. The examiner can normally be reached on M-F 9:00-5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David Scherbel can be reached on (703) 308-1272. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Allen J. Flanigan
Primary Examiner
Art Unit 3753

AJF